

This is a claim for a September 2, 1997 accident. Claimant alleges that she injured her left lower extremity in that accident and afterwards developed an altered gait, which aggravated her lower and upper back. But in the July 24, 2002 Decision, Judge Fuller determined that claimant had only proven that she injured her left lower extremity as a result of the work-related accident. Consequently, the Judge awarded claimant permanent disability benefits for an 11 percent functional impairment to the left lower extremity.

Claimant contends Judge Fuller erred. Claimant argues that she sustained a 14 percent whole person functional impairment for permanent injuries to her left lower extremity and back. Additionally, claimant argues she has sustained a 33 percent task loss and a 37.1 percent wage loss, or a 35.21 percent work disability (a permanent partial general disability greater than the functional impairment rating). Accordingly, claimant requests the Board to modify the July 24, 2002 Decision and increase the amount of permanent disability benefits that she is entitled to receive.

Conversely, respondent and its insurance carrier urge the Board to affirm the Decision.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes that the July 24, 2002 Decision should be affirmed. The Board adopts the findings and conclusions set forth by Judge Fuller in the Decision.

In short, claimant has failed to prove that she injured her back as a result of the September 2, 1997 accident at work when claimant fell down some stairs. The greater weight of the evidence establishes that claimant sustained permanent injury to only her left ankle as a result of that accident.

There are a number of facts that counter claimant's contention that she injured her back as a result of her work-related accident, including claimant's inconsistent history of when her back symptoms began after the accident, the evidence that claimant was making back complaints less than two months before the September 1997 accident, and the evidence that claimant injured her back in an August 1998 automobile accident, to cite only a few. But it is sufficient for purposes of this Order to note that in this case the Board accepts the opinion of Dr. C. Reiff Brown, whom the Judge selected to perform an independent medical evaluation. Dr. Brown determined that claimant had only sustained permanent injury to her left lower extremity as a result of the September 1997 accident. And the only opinion in the record that claimant sustained permanent injury to her back as the result of the September 1997 accident was from Dr. Pedro A. Murati, whom claimant's attorney hired for purposes of this claim.

Considering the entire record, the Board finds Dr. Brown's opinions regarding claimant's permanent functional impairment the most persuasive. Consequently, the Board affirms the Judge's conclusion that claimant is entitled to receive benefits for an 11

percent functional impairment to the left lower extremity due to the September 2, 1997 accident.

AWARD

WHEREFORE, the Board affirms the July 24, 2002 Decision entered by Judge Fuller.

IT IS SO ORDERED.

Dated this ____ day of May 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
Gary K. Albin, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Director, Division of Workers Compensation